In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1588

GEORGE PETER DELVECCHIO, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES

Petitioners challenge the validity of a court-ordered wire interception on the ground that the application for the order identified the Assistant Attorney General in charge of the Criminal Division as the person within the Department of Justice who authorized its filing when in fact the Attorney General personally did so.

Petitioners were charged in a two-count indictment with having conducted and having conspired to conduct an illegal gambling business in violation of 18 U.S.C. 1955. On January 17, 1972, in the United States District Court for the Middle District of Pennsylvania, they entered pleas of guilty to the conspiracy count on a stipulation that they might withdraw the pleas in the event that the court ruled to suppress the wire interception evidence on which the prosecution was primarily based. This evidence had

been obtained from a telephone interception conducted pursuant to a court authorization dated January 28, 1971. The wire interception was conducted on two telephones in the home of petitioner Delvecchio in Dallas, Pennsylvania, and, pursuant to another court order, a pen register to record the telephone numbers of outgoing telephone calls was also installed on those telephones.

Petitioners filed pre-trial motions to suppress the evidence obtained from the judicially approved wire interceptions. On June 8, 1972, the district court entered an order suppressing the wire interception evidence and evidence derived therefrom. The government appealed pursuant to 18 U.S.C. 3731 and 2518(10(b). The court of appeals reversed, *per curiam,* citing its decision in *United States* v. *Ceraso,* 467 F. 2d 647 (C.A. 3) (Pet. App. A).

In the present case, the affidavits filed in the district court showed that the application for the wire interception order was personally authorized by then Attorney General John N. Mitchell, after it had been processed through the standard procedure within the Department of Justice, as set forth in detail in our petition for certiorari and brief on the merits in *United States* v. *Giordano,* No. 72-1057, certiorari granted, March 26, 1973. However, the application for the order identified the Assistant Attorney General in charge of the Criminal Division as the person within the Department who authorized its filing. Whether, contrary to petitioners' contention, that procedure renders the subsequent interception illegal is an issue now pending before this Court in *United States* v. *Chavez,* No. 72-1319, certiorari granted, May 21, 1973, as well as *Giordano.*[1]

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[1]Our petitions and briefs in *Giordano* and *Chavez* are being furnished to petitioners' counsel.

Accordingly, the Court may wish to defer disposition of the present petition pending its decisions in *Chavez* and *Giordano*.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

JULY 1973.